permit access and the conditions under which access may be denied for reasons of safety, reliability and generally applicable engineering purposes. Below, the Infrastructure Owners first address the threshold question of whether the Commission should set specific standards at all and then raise precise issues that should be considered by the Commission in reaching conclusions on that question.[10/]

20. As a general matter, the Infrastructure Owners urge the Commission to refrain from adopting specific standards governing the permissible reasons for denying access. Instead, the Commission should adopt general principles that would apply, leaving to the owner of the infrastructure the specific criteria for denial under each of the four types of exceptions. This position is premised on the unquestionable fact that standards of insufficient capacity, safety, reliability, and generally applicable engineering purposes vary greatly among utilities themselves and among the types of infrastructure subject to the

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[10/] The provisions of Section 224(f)(2) are technically complex, requiring a consideration of the NESC, National Electric Code (NEC), Occupational Safety and Health Administration ("OSHA") standards, other applicable safety standards, state safety laws and regulations, and the safety specifications and standards of individual utilities. Because Section 224(f)(2) applies only to electric utilities, the Commission need not address the multitude of issues raised by Section 224(f)(2) in this proceeding. Rather, a further notice of proposed rulemaking may be warranted, especially since such an action would not delay the implementation of the Commission's rules and regulations applicable to LECs. In the unlikely event the Commission promulgates any regulations having an impact on LECs in such a further proceeding, LECs would be subject to such regulations at that point.

Pole Attachments Act. Safety and reliability standards for poles are different and are not applicable to ducts, conduits and rights-of-way. As a result, for example, the reasons to deny access based on insufficient capacity in a pole do not equate to the reasons to deny for insufficient capacity in a conduit, as they are distinctly different facilities with unique physical characteristics.

21. In addition, safety and reliability standards may vary greatly depending upon the construction of the pole, duct, or conduit. For example, poles may be constructed of concrete, steel, wood, or fiberglass. They may be laminated or not. They come with various classifications and heights. Setting standards for each of these poles is problematic. These same principles apply to ducts and conduits. Rights-of way, likewise, must be considered independently. Because the Commission cannot possibly anticipate every conceivable variance, the Infrastructure Owners urge the Commission to simply adopt general principles that will be applicable to all types of utilities and their infrastructure.

22. Below, the Infrastructure Owners offer examples of factors which, in their view, must serve as permissible bases of denial. This enumeration should not be deemed exhaustive nor is it intended to serve as a basis for the development of specific standards to govern Sections 224(f)(1) or 224(f)(2). Rather, the examples are intended to illustrate the multitude of factors that

a utility faces in considering whether a grant of access is consistent with the particular set of conditions that may relate to a single attachment or pole. Safety and reliability concerns are dynamic, varying with the load and conditions of the electric system at any given time. Every eventuality cannot possibly be accounted for in the rulemaking process. The rules must give electric utilities flexibility to deny access under any conditions in which the utility has a reasoned basis for concluding that attachment or access would unnecessarily jeopardize safety of life or property or the reliability of its electric system.

A. Insufficient Capacity

23. In the Infrastructure Owners' view, the determination of whether sufficient capacity exists to accommodate access to a pole, duct, conduit or right-of-way must be left to the sole discretion of the party that owns or controls the infrastructure in question.[11/] As noted above, the development of specific criteria to be used to determine whether sufficient capacity exists with respect to each type of facility (pole, duct, conduit or right-of-way) is not feasible. Therefore, the Infrastructure

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[11/] As noted above, electric utilities often have joint use/ownership agreements with telephone companies. Capacity, safety, reliability and engineering analyses must take into account those agreements. Access to infrastructure subject to joint use/ownership agreements should be determined in accordance with the comments offered here, regardless of whether the infrastructure is actually owned by the electric or the telephone utility.

Owners encourage the Commission to adopt three fundamental principles to govern the determination of whether sufficient capacity exists to permit access.

24. First, a determination of whether sufficient capacity exists to allow access to infrastructure should be based, in part, on existing standards such as the NESC, the NEC, applicable state electrical codes, the rules and regulations of OSHA, standards set by standards-setting organizations like ANSI and ASTM, internal electric utility construction and specification standards, and other applicable laws and regulations, both state and local. Insufficient capacity under such a standard would include a lack of sufficient spacing clearance, interference with existing facilities, lack of structure strength, lack of working clearance, and lack of security. In sum, in making determinations about access, one part of the overall evaluation is whether access comports with all applicable federal and state laws, approved standards, and internal utility specifications and engineering instructions.

25. Second, whether capacity is sufficient to accommodate access must be viewed on the basis of the currently available capacity. The Infrastructure Owners urge the Commission to adopt a general standard that recognizes that owners of poles, ducts, conduits and rights-of-way may deny access for insufficient

existing capacity rather than requiring the expansion of capacity (for example, by the installation of a taller pole).

26. In the case of poles, unrestricted construction generated by multiple requests for access could force premature pole replacement for reasons of height and strength, increased outages for electric customers and increased costs to electric ratepayers and investors. Further, taller poles pose maintenance and safety concerns to the electric utility's employees because taller poles may force the installation of electric facilities beyond the reach of the usual bucket truck (which is used to perform emergency repairs to electrical equipment on poles). In addition, taller poles also are more scarce. Requiring new construction in conduits or ducts is equally difficult, costly and potentially hazardous, and could result in stranded costs that are unrecoverable by the utility.

27. Determinations of whether capacity in rights-of-way exists is a matter of properly interpreting the scope of the easement or right-of-way, a question that turns on the legal instrument granting the right-of-way and/or the applicable state law. Utility easements often restrict the use of the right-of-way to the utility's own electric purposes. Similarly, utilities may only have access for transmission and not distribution purposes. In such cases, a legal ability to grant access does

not exist and the party seeking access must obtain its own easement or right-of-way from the property owner.

28. Third, the Commission must acknowledge that the future needs of the electric utility are a legitimate basis for denying access. The infrastructure owner must be able to reserve capacity to itself, to take into account its own future utility needs (for example, for the placement of additional circuits, the installation of transformers or the installation of protective equipment) in determining whether there is sufficient capacity on a pole to permit access. The provision of safe, reliable electric service is paramount.

B. Safety Issues[12/]

29. In general, Congress has appropriately recognized the unique safety and operational issues associated with electric utilities and with their infrastructure in establishing the safety exception to the access provision of Section 224(f)(1). Electric power is a necessity of modern life; it also, however, has the potential for harm to persons and property if safety precautions are not followed. Because of its inherent nature, in some jurisdictions utilities may be subject to a higher standard of care than other employers. The Infrastructure Owners submit

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12/ Matters of safety are inextricably linked to matters of reliability and capacity. Based on this interrelationship, the Infrastructure Owners submit that determinations of access should be left to the electric utilities themselves to the greatest extent possible.

that only electric utilities have the complete experience and expertise required for the effective, efficient and safe operation of their systems.[13/] The Infrastructure Owners are the only entities with the incentive to maintain the expertise involved in operating their systems.

30. Section 224 contemplates the introduction of new variables, in the form of non-utility personnel and facilities, into utility systems that are already highly complex. The Commission must recognize, in implementing the provisions of Section 224, that any diminution in an electric utility's control over its infrastructure, aside from the constitutional infirmities, increases the potential for mishaps and harm to persons and property. While the Infrastructure Owners appreciate the pro-competitive policies underlying the 1996 Act's access provisions, considerations of safety must come first in the establishment of any regulations governing access to utility infrastructure by outside parties.

[13/] Performing work on a utility pole, particularly in proximity to high-voltage power lines, presents unique hazards and requires special training, equipment and procedures. Accordingly, OSHA has promulgated safety standards governing such work in the electric power distribution industry. These include standards governing the construction of such facilities (29 C.F.R. Part 1926, Subpart V), and their operation and maintenance (29 C.F.R. § 1910.269). Also, OSHA has promulgated special standards for the telecommunications industry which contain specific requirements for work on utility poles (29 C.F.R. § 1910.268).

31. Based on their unrivaled knowledge, experience and training in matters of electrical generation and distribution and, in particular, with regard to their own systems, the Infrastructure Owners submit that the electric utility faced with a request for access or attachment is in the best position to accurately evaluate whether granting that request would pose an unacceptable risk, either to the requesting entity's personnel or property, to the utility's personnel or property, or to the public in general. Accordingly, the rules should leave the electric utilities with significant discretion to respond to and evaluate requests for access. Additionally, the electric utilities' authority to deny access must encompass the ability to deny an attachment altogether or to restrict certain facilities, equipment, tools or personnel from certain locations completely or at certain times, depending upon the prevailing safety considerations. The utilities' discretion in this regard must be flexibly construed so that the safety objectives of Section 224(f)(2) can be carried out efficiently and effectively.

32. Electric utilities are subject to a variety of standards in the operation of their systems. Those standards stem from federal and state statutes and industry and local codes, as well as from the utilities' own standards or guidelines. Moreover, electric utilities face serious risks of tort liability and, in fact, are subject to specific, significant insurance requirements under state laws and regulations. The

paramount safety considerations associated with delivering electricity to the public dictate that operations be carried out in accordance with time-tested and predictable protocols. As a basic principle, the Infrastructure Owners submit that the rules must permit an electric utility to deny access to its poles, ducts, conduits and rights-of-way whenever a request is likely to result in a possible risk of violating, on the part of either the requesting carrier or the utility: (1) any federal, state, county or local statute, code, ordinance or other provision having the force of law; (2) the safety standards that the utility sets for itself; or, (3) any generally accepted industry, trade or scientific guideline or principle applicable to the facility. The Infrastructure Owners submit that this consideration is critical and must be the starting and ending point in the analysis of the safety issues associated with any request for access.[14/]

33. Further, electric utilities must be able to condition access on an attaching party's agreement to indemnify and hold the utility harmless from the consequences of any actual or claimed violation of a standard, as set forth above, or other

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[14/] Statistics reveal the greater relative risks of work on electrical facilities versus work on telephone facilities. For example, the number of nonfatal occupational injuries and illnesses involving days away from work was approximately 60% higher for electrical power installers/repairers than for telephone line installers/repairers. See U.S. Department of Labor, Bureau of Labor Statistics, Census of Fatal Occupational Injuries, 1994.

potential liability for harm to person and property associated with the attachment or access. While market competition is a worthy goal, it cannot justify unnecessary risk to life or property, or the exposure of utilities, their ratepayers and investors to possible violation and liability resulting from attachments.

34. As a general matter, utilities must be permitted to deny access to requesting parties if the requesting parties are unable to present minimum assurances, acceptable to the utility, in advance of attachment (and on a continuing basis thereafter), of their ability to meet safety standards. Factors that, as a minimum, should serve as permissible bases for denial include: (1) a history of regulatory or code violations, or (2) inadequate resources, experts or training to maintain system integrity or to deal with equipment or system failures. Given the consequences of mismanaged attachments, it is critical that electric utilities be able to ensure the continued safety of their systems prior to granting access and on a continuing basis thereafter. Further, the electric utility must be able to terminate access given to attaching parties who, either through modifications or inadequate maintenance, violate or risk violation of the above standards. Also, expenses associated with the withdrawal of access and any measures undertaken to restore compliance, must be borne by the attaching entity. The utility must also be able to deny further access to the offending party, until the offending party

demonstrates an ability to comply with all safety standards, to the satisfaction of the utility.

35. The attachment and maintenance of communications equipment necessarily involves work in close proximity to electrical distribution facilities, most often facilities which are energized and carrying high-voltage electricity. A high level of specialized knowledge, experience and training is required for this type of work to be carried out safely. Accordingly, utilities must be able to condition attachment upon adequate training of personnel performing any work on or near their facilities, at the expense of the attaching party and subject to verification by the utility. In appropriate situations, the electric utility must be able to require that installation or maintenance be performed only by its own personnel.

36. Each additional party attachment adds to the complexity of working on a pole, conduit, or duct, and exponentially increases the risk of a mishap, as workers for each attaching party face a greater number of unknown factors in working on the pole and its equipment. Additionally, the presence of multiple party attachments raises the likelihood of harmful interaction between system elements. In times of emergency, multiple party attachments can increase the difficulty of identifying and responding to a particular problem, not just for utilities and

attaching parties, but also for third party emergency personnel. The rules must give electric utilities discretion to limit the number of attaching parties and facilities based on such considerations.

37. Utility personnel must regularly access the utility's pole-mounted facilities and equipment for inspection, maintenance and repair. Poles are accessed either by climbing or through the use of aerial lift trucks. Additionally, it is occasionally necessary to rescue an unconscious worker from the pole-top. Communications equipment and facilities are always mounted on pole space beneath the electrical facilities. This, in many instances, requires an electric utility worker climbing the pole to unbelt from the pole and climb through the communications facilities to reach the work area, which can increase the time, difficulty, costs, and risks associated with utility operations. Furthermore, NESC rules dictate minimum pole climbing space, a factor which must be considered in access determinations. Additional pole attachments also can impair lift truck maneuverability and can impede access. The addition of too many attachments may require access to both sides of the pole, posing problems where access is limited, such as when a pole is located adjacent to a road, body of water, or private property. The rules must permit utilities to deny attachment of equipment that would unreasonably impede access or endanger workers attempting access or rescue.

38. The attachment of virtually any equipment to a pole has implications for that pole's structural integrity. Equipment adds its own weight to the pole's load bearing capability and also increases the effects of such phenomena as wind and ice. All of these factors can contribute to degradation of structural integrity over time and can increase the likelihood of pole lean or shearing failure. Accordingly, the rules must allow utilities to deny access based upon their own determination that the attachment is not consistent with the structural integrity of the pole and/or its anchors and guys.

39. The confined spaces of manholes containing ducts and conduits pose heightened safety considerations, requiring very specialized training and precautionary measures to maximize safety. Often electrical cables in a duct or conduit system cannot be fully de-energized during work. Because of the concentration of electric facilities, confined space, and limited room to maneuver in these areas, the utilities are particularly concerned with the potential for inadvertent contact with electric or communications facilities. Indeed, the NESC Safety Rules for Underground Lines restrict activity in ducts and conduits. "Attachment" of additional facilities in these locations will increase the need for caution. Further, some types of equipment (such as, for example, conductive cable) are not appropriate in confined underground settings. In light of these factors, the rules must give electric utilities substantial

discretion regarding access to their ducts and conduits. Electric utilities must, for example, be able to completely restrict personnel and certain equipment and materials from ducts and conduits where access would violate an applicable standard, code or statute. In all other cases, the rules must leave to the electric utilities the discretion to condition access to ducts and conduits on the presence and supervision of an electric utility representative, or on the performance of the installation by the electric utility. The expense of these measures must be borne by the attaching entity.

40. Utilities are themselves prohibited from making certain uses of their poles and rights-of-way by factors which may be separate from issues of safety. For example, a local zoning ordinance, or a private contract with a landowner, may specify that a right-of-way may only be used for the distribution of electricity. The electric utility may further be restricted from altering its pole attachments for reasons of aesthetics or "visual pollution". In such instances, any rules must not hold the utility responsible for securing or denying access for a communications carrier.

C. Reliability Issues

41. Access to poles, ducts, conduits or rights-of-way may be denied for specific reasons related to reliability. The need for safe, adequate, reliable electric service to protect life and

property cannot be overemphasized; the rights of any licensees of infrastructure must be secondary. The ability of the utility to reliably provide electric power to facilities and customers -- including hospital and other medical facilities, military bases, sanitary sewer facilities, water facilities, emergency communication facilities, police and fire stations, government offices, traffic control facilities, and to residential and business users -- is paramount.

42. Reliability is the ability of a power system to maximize the availability of electric service to customers and to minimize outage times when unpredictable conditions occur. Reliability issues encompass the ability of a utility to construct, modify, operate, control, maintain, and/or restore its electric system with few interruptions of service for a minimum amount of time. Reliability also includes preventing the uninvited introduction of any flows of 60 Hz, other power frequencies or other electromagnetic frequencies.

43. Internal engineering standards are also used to determine whether facilities are reliable. Two reliability methods are generally used. Method A looks at the fiber stress placed on poles, and is the method most commonly used by utility companies. Method B examines the reliability of various components on structure. Although Method B is regarded as reliability design, there is no advantage in using this method

for distribution facilities. One problem with Method B is that it requires a large database of information before it can be effectively utilized. Currently, there is a significant amount of variability in the design of electric facilities.

44. The ability to maximize service is dynamic, depending upon a number of variable factors. Reliability is a major issue in the electric business; every piece of utility equipment is sometimes called upon to function at or beyond its normal capacity. Decisions with respect to reliability must be made by the utility in the exercise of its best judgment to ensure a safe, reliable electric service.

45. Many conditions under which access may be denied involve both reliability and safety issues. For example, operational concerns affecting reliability arise when a pole height is extended to accommodate a new telecommunications carrier because of the ability -- or rather inability -- of utility crews and vehicular equipment to reach utility facilities on the taller pole. Furthermore, attachments on both sides of the pole are not feasible because workers cannot maneuver around them. National safety codes prohibit the addition of facilities that make poles unclimbable by workers.

46. As noted above, attachments by others have the potential of increasing the probability of factors that may

compromise the reliability of the electric system. For example, increased installation and maintenance activities increase the risk of third party interference with the electric system. The attachment itself also could erode existing margins of safety/clearances or pole integrity and thereby increase the probability of equipment failures. Like safety, reliability can be affected by pole wind and ice loading, and by the strength of existing anchors and guys when suitable rights-of-way are not available to install additional poles.

47. Although standards of reliability may not be a function of the type of pole, reliability itself does depend on pole type. Generally, facility loading and maintenance activities greatly affect the reliability of a pole. Taking into consideration the different heights, classes, species and chemical treatments of poles, several hundred different types of poles may exist within any <u>one</u> utility's infrastructure. Due to such variation, specific standards of distribution reliability for poles cannot be determined for application or use on a universal basis. This principle applies equally to ducts and conduits.

48. Age of infrastructure makes adoption of reliability standards extremely difficult and impractical. Reliability standards for a two-year old pole are different than for a 15-year old pole. This fact alone demonstrates the complexities

of attempting to adopt reliability standards that will apply to all manner of infrastructure.

49. The absence of industry-wide standards with respect to electric system reliability supports the position that reliability standards are problematic and impractical. Although state and local regulatory operators clearly take an interest in service reliability of utilities within their jurisdictions, each electric utility determines its own reliability standards; standards will vary even within that same utility's service territory, depending on factors such as local or regional conditions, population density, age of infrastructure, customer mix and requirements, and location of the customer (e.g., rural or urban). The individual system of reliability should be continued.

50. As suggested above, reliability is a matter unique to each utility company working with its state PUC to develop standards of reliability that the utility must follow. Each state sets different standards that depend on the utility's own system. Due to the variances in each electric system, standards should continue to be developed on a case-by-case basis, with consideration given to local, site-specific conditions. Because it is already held accountable under state law for the reliability of its system, the utility is the best judge of the effect on reliability of allowing access. Indeed, States may and

should have primary jurisdiction over issues of safety and reliability for the purpose of protecting their own citizens. The FCC should not duplicate nor interfere with the States' primary role.

51. With respect to ducts and conduits, these facilities are generally constructed only for planned needs. Though some ducts may be unused in the short-term, in the long-term they will eventually be required for electric service. In general, some of the open space in ducts is used for ventilation and to keep cables cooler during periods of heavy loading. Additional cable in that space would prevent adequate ventilation and would reduce the thermal capacity of the duct. Moreover, even if cables placed in the duct do not inhibit ventilation, they would be subject to extremely high temperatures during periods of heavy loading.

52. The NESC, which contains rules considered necessary for the safety of employees and the public, suggests that the utility maintain enough space in ducts or conduits to ensure the proper temperature of the electric conductors and to allow for the pulling of additional and/or replacement conductors through the ducts or conduits, as needed. In addition, some companies adopt company-specific standards regarding reliability in ducts and conduits. For example, some companies do not permit the installation of conductive cable in underground facilities.

53. No measure of reliability has been effective in predicting future reliability with any measure of accuracy beyond generalized trends. Although System Average Interruption Duration Index, System Average Interruption Frequency Index, Average Service Availability Index and Customer Average Interruption Duration Index are commonly used measures of reliability, they do not constitute reliability "standards," because there is no standard number of outages or duration of an outage that defines reliability, even within those indices. As a practical matter, the reliability of a system is company-specific designed and dependent upon the number and length of outages customers are willing or able to accept, under the circumstances.

54. Measures of reliability are also subject to many uncontrollable external influences, such as the environment, climate, and weather. As a result, a utility must be able, without penalty, to deny anyone access to its facilities based on reliability-related concerns specific to that utility, location or attachment.

55. In sum, the FCC should not establish regulations that require a certain minimum or quantifiable threat to reliability before a utility may deny access. Compliance with all applicable codes (e.g., NESC, other safety codes, OSHA standards and utility

design criteria) already ensures that reliability levels are maintained.

D. Engineering Purposes

56. There are several conditions under which access to poles, ducts, conduits or rights-of-way may be denied for generally applicable engineering purposes. In many ways, these engineering purposes overlap with the safety, reliability and standards specification justifications as discussed above.

57. Access should be denied if the attachment would, in the utility's judgment, potentially compromise the structural integrity of the electric facility. Compromising the structural integrity of the facility would jeopardize the ability of the utility to provide safe, reliable service to its customers.

58. Proper engineering includes, but is not limited to, knowledge of the system and its characteristics, the environment the system operates in, and adherence to industry and utility specific standards. Allowing non-qualified or unknowledgeable personnel access to poles, ducts or conduits may affect certain design considerations, such as wind loading on poles and heating of ducts affecting cable capacity. These considerations may critically affect the functioning of the electric system.

59. In addition to all federal, state and other code requirements, utilities continuously develop construction standards and references to accommodate their unique circumstances and experience. These standards prescribe the construction methodologies and specifications required for a safe, reliable electric system. It is not uncommon for a state public service commission to inspect such electric facilities and to impose penalties if the utility is not meeting acceptable levels.

60. Because utilities are already held responsible for the performance of their systems by federal, state, and local regulators, the utility is the best judge of when access should be denied for engineering purposes.

E. Utilities Should Not Bear the Burden of Proving that Denial of Access Was Proper

61. The Commission seeks comment on whether it should impose on utilities the burden of proving that a denial of access was justified pursuant to Section 224(f)(2) of the 1996 Act. Congress expressly gave utilities the ability to deny access in instances where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes. Because utilities have a right to deny access, a "presumption of correctness" should attach to that decision, provided the utility has stated the basis for the denial. The burden of proving that denial of access was improper should rest

with the denied party, and not with the utilities. Because the revenue prospect from an additional attachment is an incentive to permit access, it should be assumed that a denial is not arbitrary, but based on the permissible standards of Section 224(f)(2).

62. The question of who should bear the burden of proof with respect to whether denial of access was proper also could be answered by looking at the relative risks associated with improper denial of access versus improper grant of access. That is, the potential harm from the wrongful denial of access (e.g., the inability to provide cable television services) is irrefutably less significant than the potential harm from the wrongful grant of access (e.g., death, serious bodily harm, property damage, electrical outages). The burden of proof should be placed where there is the least likelihood of harm from a mistaken decision.

63. Consistent with the current pole attachment provisions (Section 224(b)(1)), a party that believes denial was improper, as stated by the utility in its response to a request for access, should be required to file a complaint with the Commission and should bear the burden of proof as the petitioner. The denied party should be required to overcome this presumption in its complaint and supporting documentation. If this presumption is overcome, only then should the burden of proof shift to the

utility. Because electric utilities are in the best position to know whether access is available, they should be required simply to respond to a complaint filed by a denied party, and not to carry the burden of proof.

64. Consistent with Section 224(f)(2) of the 1996 Act, the NESC, NEC, other state and utility specific safety standards and OSHA requirements are the best objective predictors of accessibility to poles. Compliance with such requirements should establish that denial is appropriate. Thoughtful consideration of the above-mentioned criteria for determining whether access should be given must also be part of the analysis. Evidence submitted by the utilities of failure to meet any of these criteria should be sufficient evidence of a proper denial of access.

F. Regulations to Ensure that Utilities Fairly and Reasonably Allocate Capacity Are Unnecessary

65. Notwithstanding the constitutional questions, regulations aimed at ensuring that capacity is fairly and reasonably allocated are unnecessary. Indeed, in the Infrastructure Owners' view, such regulations would be cumbersome and unworkable, and could undermine the integrity, reliability and safety of electric utility equipment, personnel and operations.

66. Each request for access must be assessed on its own merits in the context of local, site-specific conditions and circumstances, and the many uncertain factors and special circumstances which exist with regard to each pole, duct, conduit or right-of-way. Therefore, the Infrastructure Owners submit that it would be impossible for the Commission to establish regulations of general applicability in this area. Regulatory micromanagement of matters that are highly variable is, as a general proposition, unsuccessful. From the perspective of the Infrastructure Owners, the attempt to develop regulations establishing a fair and reasonable allocation of capacity would be a wasteful exercise, resulting in unworkable regulations.

67. Allocation of capacity is an issue best left to market forces and applicable safety standards (including engineering and company specific standards). Based on demand and supply, allocation of capacity should be premised on a first-come, first-served basis. Where no capacity is available, denial of access is justifiable.

68. To a large measure, allocation of capacity will be based on unforeseeable events; therefore, any pre-set allocation of capacity would be speculative. Moreover, utilities must be able to plan for the future use of their own facilities. For example, all utilities must plan for load growth and redundant facilities in the case of an emergency. Imposing regulations